

OCT -2 2003

FEDERAL ELECTION COMMISSION

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FIRST GENERAL COUNSEL'S REPORT

2003 OCT -2 A 11: 52

**SENSITIVE**

MUR: 5164

DATE COMPLAINT FILED: January 8, 2001

DATE OF NOTIFICATION: January 12, 2001

DATE ACTIVATED: December 18, 2002

STATUTE OF LIMITATIONS: December 10, 2004<sup>1</sup>

MUR: 5169

DATE COMPLAINT FILED: January 30, 2001

DATE OF NOTIFICATION: February 5, 2001

DATE ACTIVATED: December 18, 2002

STATUTE OF LIMITATIONS: December 10, 2004<sup>2</sup>

MUR: 5182

DATE COMPLAINT FILED: March 19, 2001

DATE OF NOTIFICATION: March 26, 2001

DATE ACTIVATED: December 18, 2002

STATUTE OF LIMITATIONS: December 10, 2004<sup>3</sup>

MUR: 5190

DATE COMPLAINT FILED: April 4, 2001

DATE OF NOTIFICATION: April 11, 2001

DATE ACTIVATED: December 18, 2002

STATUTE OF LIMITATIONS: December 10, 2004<sup>4</sup>

STAFF MEMBER: Daniel E. Pollner

**SOURCE:** COMPLAINT GENERATED

**COMPLAINANTS:** MUR 5164: Reform Party of Connecticut  
MUR 5169: James Mangia and Harry Kresky  
MUR 5182: Colorado Reform Party  
MUR 5190: Virginia Reform Party

<sup>1</sup> According to financial reports that it has filed with the Commission, the Committee's earliest disbursement of public money appears to have occurred on December 10, 1999. Thus, the five-year statute of limitations will expire for the earliest potential violation on December 10, 2004. See 28 U.S.C. § 2462.

<sup>2</sup> See Note 1, *supra*.

<sup>3</sup> See Note 1, *supra*.

<sup>4</sup> See Note 1, *supra*.

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**RESPONDENTS:**    MUR 5164:    Reform Party 2000 Convention Committee, and  
Gerald Moan, Treasurer  
Reform Party of the United States of America, and  
Mark Lauterman, as Treasurer  
Perelman Pioneer & Company, Inc.  
The Performance Group

MUR 5169:    Reform Party 2000 Convention Committee, and  
Gerald Moan, Treasurer  
Reform Party of the United States of America, and  
Mark Lauterman, as Treasurer  
Buchanan for President, Inc.

MUR 5182:    Reform Party 2000 Convention Committee, and  
Gerald Moan, Treasurer  
Reform Party of the United States of America, and  
Mark Lauterman, as Treasurer  
Perelman Pioneer & Company, Inc.  
The Performance Group

MUR 5190:    Reform Party 2000 Convention Committee,  
Gerald Moan, Treasurer  
Dale A. Cooter, Esq.  
Reform Party of the United States of America, and  
Mark Lauterman, Treasurer<sup>5</sup>  
Cooter, Mangold, Tompert & Wayson, P.L.L.C.  
Pat Choate  
Patrick J. Buchanan

**RELEVANT STATUTES**            26 U.S.C. § 9008(a)  
**AND REGULATIONS:**        26 U.S.C. § 9008(c)  
  26 U.S.C. § 9008(g)  
  26 U.S.C. § 9012(c)  
  
  11 C.F.R. § 9008.3(a)(2)  
  11 C.F.R. § 9008.7(a)  
  11 C.F.R. § 9008.11  
  11 C.F.R. § 9008.12(b)

**INTERNAL REPORTS CHECKED:**    Audit Documents  
Financial Reports

<sup>5</sup> In MUR 5190, the Reform Party of the United States of America and its treasurer were named as respondents, received a copy of the complaint, and filed a joint response with the Reform Party 2000 Convention Committee and its treasurer. For the other three MURs discussed in this report, the Reform Party of the United States of America and its treasurer are internally generated respondents

**I. INTRODUCTION**

This First General Counsel's Report covers four matters under review ("MURs") involving the Reform Party 2000 Convention Committee ("Committee") and Gerald Moan, as Treasurer – MURs 5164, 5169, 5182, and 5190. Each MUR arose from a complaint filed with the Commission. Due to substantial factual and legal overlap, we address all four MURs in this Report.

**II. OVERVIEW**

The Committee was established as a "convention committee" of the Reform Party of the United States of America ("RPUSA") pursuant to the Presidential Election Campaign Fund Act ("Fund Act"), which provides public financing for presidential election campaigns and nominating conventions.<sup>6</sup> To qualify for public funding for its presidential nominating convention, a party must establish a "convention committee" to be "responsible for conducting the day to day arrangements and operations of that party's presidential nominating convention." 11 C.F.R. § 9008.3(a)(2). Pursuant to the Fund Act, the Committee received \$2,522,690 in federal funding to pay for certain allowable convention expenses.<sup>7</sup> As set forth below, all four MURs involve allegations regarding how the Committee spent the public money.

**III. BACKGROUND**

Due to the complicated and controversial series of events surrounding the RPUSA between the 1996 and the 2000 elections, a factual background is necessary to adequately discuss the issues raised in these MURs.

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<sup>6</sup> See 26 U.S.C. § 9001, *et seq.* The Committee registered with the Commission as a national committee of the RPUSA by filing a statement of organization on October 9, 1999.

<sup>7</sup> The use of these funds is governed by 11 C.F.R. § 9008.7(a), which sets forth the types of expenses that may be paid with public funding.

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**A. 1996-2000: Between Presidential Elections**

In the 1996 general election, Ross Perot and Pat Choate ran as the Reform Party candidates for President and Vice President, respectively. The Perot/Choate ticket received a sufficient portion of the vote to entitle the party to public money for its 2000 presidential nominating convention under the Fund Act. The public funds were disbursed to the Committee in two installments, one in December 1999 and the other in June 2000.

In the summer of 1999, a RPUSA meeting was held in Dearborn, Michigan, at which time John Gargan was elected Chairman of the RPUSA and Ronn Young was elected Treasurer. After the Dearborn Convention, the RPUSA established the Committee (*i.e.*, the convention committee), and Mr. Gargan appointed Mr. Young as Chairman and Treasurer of the Committee.

In late 1999, a group within the party sought to recruit Patrick J. Buchanan to be the party's presidential nominee in 2000. Mr. Gargan and Mr. Young were apparently opposed to Mr. Buchanan as the party's presidential candidate. On February 12, 2000, a meeting of the RPUSA National Committee was held in Nashville, Tennessee, ("Nashville Meeting"). Mr. Gargan, as Chairman, refused to call the meeting to order, but Gerald Moan, as Vice Chairman, did so. Thereafter, pursuant to the Party's constitution, the National Committee removed Mr. Gargan as Chairman and replaced him with Mr. Choate. The National Committee also at that time removed Mr. Young as Treasurer and replaced him with Tom McLaughlin. Mr. Choate, as Chairman, then appointed Mr. Moan as the Chairman and Treasurer of the Committee, replacing Mr. Young, who had been appointed to those posts by Mr. Gargan just a few months earlier. Thus, at the Nashville Meeting, Mr. Choate and Mr. Moan, who supported Mr. Buchanan, replaced Mr. Gargan and Mr. Young, who opposed Mr. Buchanan.

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1 Mr. Young and Mr. Gargan, disputing the validity of the Nashville Meeting,  
2 refused to recognize the actions taken there and refused to cede control over the party.  
3 Mr. Choate and Mr. Moan filed a lawsuit in federal court in Virginia against Mr. Gargan  
4 and Mr. Young to validate the actions taken at the Nashville Meeting and obtain control  
5 over the public money that had been paid to the Committee. The U.S. District Court for  
6 the Western District of Virginia in Lynchburg ("Lynchburg Court") ruled in favor of  
7 Mr. Choate and Mr. Moan, concluding that Mr. Gargan and Mr. Young had been duly  
8 removed from their respective offices at the Nashville Meeting.<sup>8</sup> Mr. Choate and  
9 Mr. Moan took control over the RPUSA and the Committee pursuant to the court ruling.

10 **B. 2000 Primary and Nominating Convention**

11 Once the new leadership was in place, plans went forward for the Party to hold its  
12 2000 nominating convention in Long Beach, California. The RPUSA conducted pre-  
13 convention primary balloting by mail. The two leading candidates for the presidential  
14 nomination were Mr. Buchanan and John Hagelin. Pursuant to party rules, various  
15 groups of voters were sent primary ballots, including voters on lists submitted by the  
16 candidates. As the date of the convention neared, Buchanan supporters and Hagelin  
17 supporters began to complain of each other's voter lists.

18 On August 10, 2000, Mr. Moan convened a nominating convention at the Long  
19 Beach Convention Center ("Long Beach Convention"). Claiming they had been wrongly  
20 denied access to the Long Beach Convention, a group of Hagelin supporters convened a  
21 competing convention across the street from the convention center, which was presided  
22 over by James Mangia (complainant in MUR 5169) and Sue Harris DeBauche

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<sup>8</sup> *Reform Party of the United States v. Gargan*, 89 F.Supp.2d 751 (W.D. Va. 2000). The Lynchburg Court concluded that the Nashville Meeting had been duly called to order by the Party's Vice-Chairman, Mr. Moan, after the Chairman had refused to do so. The court further concluded that the National Committee's removal of Mr. Gargan and Mr. Young had been in accordance with the Party's constitution.

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(complainant in MUR 5190). Those in attendance at the Long Beach Convention selected Mr. Buchanan as the party's presidential nominee and Ezola Foster as its vice-presidential nominee. Meanwhile, those in attendance at the other convention, purporting to be conducting the party's official nominating convention, nominated Mr. Hagelin as the RPUSA presidential nominee and Nat Goldhaber as its vice-presidential nominee.

After the two conventions, supporters of Mr. Buchanan and Ms. Foster began promoting them as the party's nominees and attempted to place their names on state ballots for the upcoming general election. At the same time, supporters of Mr. Hagelin and Mr. Goldhaber began promoting them as the party's nominees and attempted to place their names on state ballots. While these competing factions were engaged in securing ballot access for their respective nominees, Mr. Moan filed a lawsuit in California Superior Court in Los Angeles ("California Court") seeking a judicial determination that the Long Beach Convention was valid and that Mr. Buchanan and Ms. Foster were the party's legitimate nominees.<sup>9</sup> The Hagelin supporters, who were defendants in the lawsuit filed by Mr. Moan, responded by asserting that the Long Beach Convention was invalid.

The California Court rejected the Hagelin supporters' contention that the Long Beach Convention was invalid and issued an injunction against Mr. Hagelin, Mr. Goldhaber and their supporters that prohibited them from promoting Mr. Hagelin and Mr. Goldhaber as the party's nominees. Specifically, the California Court made the following findings:

- The Meeting and Convention chaired by Gerald Moan [*i.e.*, the Long Beach Convention] was conducted in conformity with the Reform Party Constitution. The Meeting and Convention chaired by

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<sup>9</sup> See *Reform Party of the United States v Hagelin*, No. 028469 (Super. Ct. Cal. 2000).

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1 James Mangia, which resulted in the John Hagelin nomination,  
2 violated the Reform Party Constitution;

- 3 • Patrick J. Buchanan was properly nominated as the party's candidate  
4 for President and Ezola Foster was nominated as its candidate for Vice  
5 President. The nominations were in conformity with the Reform Party  
6 Constitution; and
- 7 • The [Hagelin Supporters] have no colorable claim that they are, or  
8 represent, the official Reform Party of the United States of America or  
9 the official candidate of the Reform Party.

10 Thus, the California Court upheld the legality of the Long Beach Convention and the  
11 Buchanan/Foster nominations.

12 **C. Public Financing for the General Election**

13 While the proceedings in the California Court were ongoing, Mr. Buchanan and  
14 Ms. Foster, claiming to be the official RPUSA candidates, asked the Commission to  
15 certify the payment of approximately \$13 million in public money for their general  
16 election campaign. Mr. Hagelin and those supporting him challenged Mr. Buchanan's  
17 and Ms. Foster's entitlement to the public funding, claiming that the Long Beach  
18 Convention was not conducted in accordance with the party's rules and, thus,  
19 Mr. Buchanan and Ms. Foster had not been duly nominated.

20 The Commission rejected the challenges mounted by the Hagelin supporters and  
21 certified approximately \$13 million in public funding for the Buchanan/Foster general  
22 election campaign.<sup>10</sup> The Commission did not, however, directly address the legality of  
23 the Long Beach Convention out of concern that doing so would "entangle [the  
24 Commission] in the complexities of party rules or procedures." Moreover, the  
25 Commission determined that the legality of the Long Beach Convention was irrelevant

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<sup>10</sup> See *Request to Deny Certification of Public Funds to Patrick J. Buchanan and Ezola Foster*, Statement of Reasons, LRA 598 (Nov. 2, 2000).

1 because "the Fund Act does not define eligibility in terms of a political party's actions."  
2 Instead, to receive public money under the Fund Act, a candidate must qualify to be on  
3 the ballot as the candidate of the party in ten or more states. Since Mr. Buchanan and  
4 Ms. Foster had demonstrated their entitlement to be on the ballot as the RPUSA nominees  
5 in more than ten states, the Commission determined that they were entitled to receive  
6 public money under the Fund Act.

7 **D. Audit of the Convention Committee**

8 The Commission's Audit Division conducted the statutorily mandated audit of the  
9 Convention Committee, which resulted in a final audit report ("FAR") that was approved  
10 by the Commission on September 26, 2002.<sup>11</sup> The FAR included a finding that  
11 approximately \$338,000 in expenditures by the Committee were not legitimate  
12 convention expenses under the Fund Act and, therefore, could not be paid with public  
13 funds. Consequently, the Commission issued a repayment determination, which requires  
14 the RPUSA to repay to the U.S. Treasury the \$333,558 that was improperly used.<sup>12</sup>

15 The largest component of the repayment determination was a \$300,000 payment  
16 to The Performance Group ("TPG") for consulting services.<sup>13</sup> The Commission  
17 determined that the Committee failed to provide documentation, as required by  
18 11 C.F.R. § 9008.10, to show what services were provided by TPG and that those  
19 services were related to the convention. The documentation that was provided indicated  
20 that at least some of the services performed by TPG were related to an emergency

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<sup>11</sup> See Report of the Audit Division on the Reform Party 2000 Convention Committee (Sept. 26, 2002).

<sup>12</sup> The repayment amount was calculated by multiplying the amount of impermissible expenditures by the ratio of total public funds received by the Committee to all funds received by the Committee, which was 98.5411 percent. See FAR at 17. Consequently, the amount of the repayment is slightly less than the amount of impermissible expenditures.

<sup>13</sup> The remainder of the repayment amount was comprised of several smaller expenditures that were determined by the Commission to have been improper.

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1 convention held in Las Vegas in March 2000, which was not the Party's official  
2 nominating convention. TPG was hired and paid by Mr. Gargan and Mr. Young before  
3 they were removed from their respective positions at the Nashville Meeting.

4 **IV. THE LAW**

5 Under the Fund Act, a political party that satisfies certain criteria is eligible to  
6 receive public financing for its presidential nominating convention. 26 U.S.C. § 9008.  
7 To qualify for public financing for its presidential nominating convention, a political  
8 party must "establish a convention committee which shall be responsible for conducting  
9 the day to day arrangements and operations of that party's presidential nominating  
10 convention." 11 C.F.R. § 9008.3(a)(2). The convention committee shall receive all  
11 public funds to which the party is entitled for its presidential nominating convention. *Id.*  
12 "All expenditures on behalf of the national committee for convention expenses shall be  
13 made by the convention committee." *Id.*

14 A committee that receives public funds for its presidential nominating convention  
15 may use those funds only for the following purposes: (1) to defray convention expenses  
16 incurred by or on behalf of the national committee receiving the public funds; (2) to repay  
17 the principal and interest on loans used to defray convention expenses; and (3) to restore  
18 funds (including advances from the national committee to the convention committee),  
19 other than contributions to the committee for the purpose of defraying convention  
20 expenses, where such funds were used to defray convention expenses.  
21 26 U.S.C. § 9008(c); 11 C.F.R. § 9008.7(a). Convention expenses include all expenses  
22 incurred by or on behalf of a political party's national committee or convention  
23 committee with respect to and for the purpose of conducting a presidential nominating  
24 convention or convention-related activities. 11 C.F.R. § 9008.7(a)(4).

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1           It is unlawful for the national committee of a major or minor party which receives  
2   any payment of public money for its presidential nominating convention to use or  
3   authorize the use of such funds for impermissible purposes as set forth at 26 U.S.C.  
4   § 9008(c). 26 U.S.C. § 9012(c)(2); 11 C.F.R. § 9012.3(b). The Commission has the  
5   power to initiate, defend or appeal any civil action in the name of the Commission to  
6   enforce the provisions of the Fund Act. 2 U.S.C. § 437d(a)(6). Any person who believes  
7   that a violation of the Fund Act has occurred, may file a complaint with the Commission.  
8   2 U.S.C. § 437g(a)(1).

9           The Commission is required to conduct an examination and audit of the  
10   convention committee no later than December 31 of the calendar year of the convention.  
11   26 U.S.C. § 9008(g); 11 C.F.R. § 9008.11. A national committee that has received  
12   federal money for use in connection with its presidential nominating convention shall  
13   repay to the U.S. Treasury any amounts that the Commission determines to be repayable.  
14   11 C.F.R. § 9008.12(a)(1). The Commission may make a repayment determination under  
15   any of the following circumstances: (1) if the committee received a payment in excess of  
16   that to which it was entitled; (2) if the committee exceeded applicable expenditure  
17   limitations; (3) if the committee accepted contributions to defray convention expenses  
18   which, when added to the federal funds received by the committee, exceeds applicable  
19   expenditure limitations; or (4) if public funds received by the committee were used for  
20   impermissible purposes. 11 C.F.R. § 9008.12(b).

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**V. FACTUAL AND LEGAL ANALYSIS**

**A. MUR 5164 and MUR 5182**

**1. Allegations**

MURs 5164 and 5182 arise from nearly identical complaints alleging that the Committee spent public money for impermissible purposes.<sup>14</sup> Since these MURs are identical in all material respects, they are discussed together. The following table summarizes the four allegations raised in MURs 5164 and 5182:

ALLEGATION	BASIS
A \$50,000 payment to the California Court for a performance bond was impermissible.	The trial and decision of the court occurred after the convention and all orders of the court "pertained only to activities taking place after the convention."
The \$300,000 payment to TPG for stage design and public relations was impermissible.	TPG is not a recognized stage design or public relations firm, was established just weeks before the expenditures were made, and the principals of TPG "have been identified to be professional lobbyists, not convention consultants."
A \$692,296 payment to Perelman Pioneer ("PP") for stage design and stage production was impermissible.	Based upon the staging requirements for the convention and the fact that PP appears to have been paid for work that was done by subcontractors, PP may not have performed the work.
All expenditures of public money by the Committee were impermissible.	The Long Beach Convention was illegal because "legitimate convention delegates were denied participation and illegitimate delegates were seated."

Thus, the first three allegations are challenges to three specific expenditures made by the Committee on the grounds that they were not legitimate convention expenses under the Fund Act. The fourth allegation challenges all of the Committee's expenditures of public money on the grounds that the Long Beach Convention was not conducted in accordance with the party's rules.

<sup>14</sup> MUR 5164 was filed on January 8, 2001, by Donna Donovan, purporting to be the Chairman of the Reform Party of Connecticut. MUR 5182 was filed on March 19, 2001, by Victor Good, who purports to be the Chairman of the Colorado Reform Party. The complaints in MURs 5164 and 5182 contain nearly identical wording and format. One was clearly copied from the other.

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**2. Responses**

**(a) The Performance Group**

TPG filed identical responses in MURs 5164 and 5182, asking the Commission to dismiss the complaints on both procedural and substantive grounds. Procedurally, TPG contends that the complaints are directed against the RPUSA and do not allege any violations by TPG of any "federal election law." Substantively, TPG contends that its contract with the Committee for it to "assist with the preparation and conduct of the RPUSA's 2000 Presidential Nominating Convention" was "entirely proper" under the Fund Act. For these reasons, TPG asks the Commission to dismiss the complaints in MURs 5164 and 5182 as they pertain to TPG.

**(b) The Committee**

The Committee filed identical responses in MURs 5164 and 5182. The Committee denies that delegates to the Long Beach Convention were seated improperly and points out that the legality of the Long Beach Convention was upheld by the California Court. Attached to the Committee's response are court documents, including copies of the injunction issued by the California Court against Mr. Hagelin and his supporters. The Committee contends that the California Court, in upholding the validity of the Long Beach Convention, considered and rejected allegations identical to those raised in these MURs. Thus, the Committee insists that the Long Beach Convention was legal and that the public money spent on it was permissible under the Fund Act.

With regard to the three specific payments challenged in these MURs, the Committee claims that two of them – the payment to PP and the payment for the performance bond -- were legitimate convention expenses. According to the Committee, documentation establishing the propriety of these payments has been provided to

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Commission staff conducting the audit. The Committee further explains that the performance bond was required by the California Court. Since the RPUSA was forced to file the lawsuit to “validate the convention,” the Committee insists that the performance bond was “directly related to the convention” and was, therefore, a legitimate convention expense under the Fund Act.

The Committee agrees, however, that the third specific expenditure challenged in these MURs – the TPG payment – was not a permissible expense. The Committee explains that Mr. Moan’s predecessor, Mr. Young, authorized the TPG payment, and that, after Mr. Moan replaced Mr. Young as Chairman, the Committee filed a lawsuit against TPG in an attempt to recover this money.<sup>15</sup> Thus, the Committee agrees that the TPG payment was not a legitimate convention expense.

(c) Perelman Pioneer

PP filed identical responses to the complaints in MURs 5164 and 5182, attached to which are numerous invoices and other documents that PP contends demonstrates that the payments it received were for legitimate convention expenses. In light of the documents it has provided, PP requests that this matter be closed as to it.

**3. Analysis**

Each of the four issues in MURs 5164 and 5182 are analyzed below. Since the analysis for the performance bond and the PP payment are identical, those expenditures

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<sup>15</sup> A jury subsequently returned a verdict in favor of TPG on the Committee’s breach of contract, unfair business practices and unjust enrichment claims, and returned a verdict in favor of TPG on its \$70,000 counterclaim against the Committee. The Committee had also initially alleged that TPG had violated FECA and the Fund Act, but those claims appear to have been voluntarily abandoned by the Committee after TPG filed a motion for summary dismissal of these claims on the grounds that the federal election laws impose no duties on TPG and, even if they do, the Commission has exclusive jurisdiction over the civil enforcement of these laws.

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are addressed together. The other two issues – the propriety of the TPG payment and the legality of the Long Beach Convention – are discussed separately.

(a) Performance Bond and PP Payment

As set forth above, the complaints in MURs 5164 and 5182 allege that the performance bond and the PP payment were not permissible expenditures under the Fund Act. The Audit Division, however, has reviewed the Committee's expenditures and did not find the PP payment or the performance bond payment to be improper. Thus, these expenditures were not identified as improper in the FAR and were not included in the Commission's repayment determination. Given that the Commission has already determined during the audit process that these expenditures were permissible, this Office recommends that the Commission find no reason to believe that any violation of the Act has occurred in MURs 5164 and 5182 as they relate to the payment to PP and the payment for the performance bond.

(b) TPG Payment

Unlike the payment to PP and the payment for the performance bond, the payment to TPG was identified in the FAR as an improper expense and was included in the repayment determination.<sup>16</sup> Moreover, the basis for the repayment determination is the same as the basis for the challenge to the TPG payment in these MURs. Although the repayment determination was based in part upon the subject matter of the work performed by TPG, both these MURs and the repayment determination are based largely on the Committee's failure to provide the necessary documentation establishing that the payment to TPG was a permissible expense. As stated above, the Commission determined that the Committee failed to provide documentation to show what services were provided by TPG

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<sup>16</sup> In fact, the \$295,623 TPG payment comprises 89 percent of the \$333,558 repayment determination.

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1 and that those services were related to the convention. Moreover, the documentation that  
2 was provided indicated that at least some of the services performed by TPG were related  
3 to an emergency convention held in Las Vegas in March 2000, which was not the Party's  
4 official nominating convention. Given that the Commission has already found the  
5 payment to TPG to be impermissible under the Fund Act, and that the reasoning behind  
6 this finding tracks the allegations in these MURs, this Office recommends that the  
7 Commission find reason to believe that the payment to TPG was not a legitimate  
8 convention expense and that the Committee, by making the payment to TPG, violated 26  
9 U.S.C. § 9008(c), 26 U.S.C. § 9012(c)(2), 11 C.F.R. § 9008.7(a), and 11 C.F.R.  
10 § 9012.3(b).

11 This Office further recommends that the Commission find reason to believe that  
12 the RPUSA violated the Fund Act as a result of the improper payments to TPG. As stated  
13 above, pursuant to 26 U.S.C. § 9012(c)(2) and 11 C.F.R. § 9012.3(b), it is "unlawful for  
14 the national committee of a major party or minor party which receives any payment under  
15 section 9008(b)(3) to use, or authorize the use of, such payment for any purpose other  
16 than a purpose authorized by section 9008(c)."

17 The mere fact that the payments to TPG were made by the Committee and were  
18 not made directly by the RPUSA (*i.e.*, the "national committee") does not relieve the  
19 RPUSA from liability for the improper payments for several reasons. First, as set forth  
20 above, pursuant to 11 C.F.R. § 9008.3(a)(2), "all expenditures on behalf of the national  
21 committee for convention expenses shall be made by the convention committee." Thus,  
22 the regulatory scheme precludes a national committee such as the RPUSA from ever  
23 making a direct expenditure for a publicly funded presidential nominating convention; all  
24 such expenditures must be made by the associated convention committee. Moreover,

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there is little doubt that the RPUSA established the Committee, controlled the Committee, and selected the Committee's officers.<sup>17</sup> The Chair of the RPUSA had the authority to remove and replace the Committee's officers and, in fact, exercised this authority on at least two occasions. Finally, it must also be noted that in its application for public financing for its 2000 presidential nominating convention, the RPUSA expressly agreed to "pay any civil penalties included in a conciliation agreement or imposed under 2 USC 437g." Thus, the RPUSA is responsible for any violations of the Fund Act committed by its convention committee. For the foregoing reasons, this Office recommends that the Commission find reason to believe that the RPUSA violated 26 U.S.C. § 9008(c), 26 U.S.C. § 9012(c)(2), 11 C.F.R. § 9008.7(a), and 11 C.F.R. § 9012.3(b) as a result of the Committee's improper payments to TPG.

This Office further recommends that the Commission take no action at this time with respect to TPG. Third party vendors, such as TPG, are not in violation of the Fund Act merely by receiving a payment that is later determined to be impermissible, at least where there is no evidence that the vendor knew that the payment was impermissible.<sup>18</sup> The Fund Act places on the recipient committees the responsibility of ensuring that public money is not impermissibly used and this Office believes that it would be unreasonable (and perhaps contrary to the Fund Act) to require vendors to effectively guarantee that their customers (*i.e.*, publicly-funded committees) are complying with the law.

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<sup>17</sup> In its application for public financing for its 2000 nominating convention, the RPUSA states, "the National Committee [of the RPUSA] has established the Reform Party 2000 Convention Committee as the convention committee responsible for conducting the day to day arrangements and operations for its 2000 presidential nominating convention and has selected Ronald Young as the convention committee chair."

<sup>18</sup> 26 U.S.C. § 9012(e), makes it "unlawful for any person knowingly and willfully to give or accept any kickback or any illegal payment in connection with any qualified campaign expense." (emphasis added).

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1           The information presently available to this Office does not indicate that TPG  
2       knew or should have known that the payment it was receiving was impermissible under  
3       the Fund Act. Nor has this Office discovered any evidence to suggest that TPG was  
4       engaged in a scheme (with or without the cooperation of the Committee) to embezzle  
5       public money or to receive an illegal kickback from the federal funds. Nevertheless, it is  
6       possible that the Commission may subsequently obtain information indicating that TPG  
7       knew that the payments it received from the Committee violated the Fund Act.  
8       Consequently, this Office recommends that the Commission take no action at this time as  
9       to TPG.

10           (c)     Legality of Convention

11           The fourth allegation raised in MURs 5164 and 5182 is that all expenditures by  
12       the Committee for the Long Beach Convention were impermissible because the  
13       convention was not conducted in accordance with RPUSA rules. Specifically, the  
14       complaints allege that "legitimate delegates were denied participation in the convention,  
15       and illegitimate delegates were seated." According to the complainants, their respective  
16       states (Connecticut and Colorado) sent legitimately selected delegates to Long Beach but  
17       they were not admitted to the convention. The complainants further contend that persons  
18       from their states who were not legitimate delegates were admitted to the convention.

19           As an initial matter, it is not clear that the failure of the party to follow its own  
20       rules for seating delegates, even if proven true, would amount to the misuse of convention  
21       funds. Indeed, the complainants do not explain how expenditures for a convention  
22       become unrelated to the convention just because all of the party's rules were not  
23       followed. In any event, the legality of the Long Beach Convention was an issue that was  
24       properly before and decided by the California Court, which held that the Long Beach

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Convention was conducted in accordance with the party's rules. Significantly, in making this ruling, the California Court rejected allegations of improper seating of delegates that are identical to the allegations raised here. Given the ruling of the California Court, this Office recommends that the Commission dismiss MURs 5164 and 5182, to the extent they allege that expenditures of public money for the Long Beach Convention were impermissible because the Long Beach Convention was not conducted in accordance with Reform Party rules.

**B. MUR 5169**

**1. Allegations**

The complaint in MUR 5169, though not entirely clear, appears to allege that the Committee violated the Fund Act by spending public money on the Long Beach Convention, which was allegedly not conducted in accordance with RPUSA rules.<sup>19</sup> Specifically, the complaint states that Mr. Moan, as Chairman of the Committee:

- knowingly provided 500,000 supporters of Mr. Buchanan with presidential nominating ballots even though these persons did not meet the criteria for receiving ballots under RPUSA rules;
- supported the efforts of the Buchanan campaign to prevent the RPUSA's Presidential Nominations Committee from conducting an audit of the lists of primary voters that were provided by the candidates;
- opposed the action of the Executive Committee of the RPUSA to disqualify Buchanan as a candidate for the RPUSA presidential nomination as a sanction for obstructing the aforementioned investigation into the qualifications of these Buchanan supporters;
- actively supported the effort by the Buchanan campaign to rescind the RPUSA nominating process; and
- refused to seat legally elected delegates to the convention who would not pledge their support for Mr. Buchanan.

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<sup>19</sup> MUR 5169 was filed on January 30, 2001 by James Mangia, who purports to be a former Secretary of the Reform Party, and Harry Kresky, who purports to be a member of the Reform Party 2000 Presidential Nominations Committee.

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**2. Responses**

Two responses to the complaint in MUR 5169 were filed. One was filed by Buchanan Reform, Inc. ("BRI") and the other was filed by the Committee.

**(a) BRI Response**

BRI points out that the complaint "does not make any specific factual allegations about Buchanan Reform, Inc., and it does not identify any provisions in [the Act] that Buchanan Reform, Inc. has allegedly violated." Consequently, BRI contends that the complaint is "insufficient as a matter of law" and urges the Commission to dismiss it.

**(b) Committee Response**

The Committee explains in its response that, pursuant to party rules, primary ballots were distributed prior to the nominating convention to various categories of primary voters, including voters identified by the candidates. The Committee claims to have "received complaints from virtually every segment of the party alleging improprieties in the submission of lists of voters to be given [primary] ballots."

According to the Committee:

the Hagelin supporters alleged impropriety by Mr. Buchanan and the Buchanan supports alleged impropriety by Mr. Hagelin. To further complicate the situation, various state party members also complained that they had been treated improperly by their respective state parties.

Thus, the Committee contends that, by the time the Long Beach Convention was convened in August 2000, "many in the party concluded that the primary balloting process was fatally flawed." According to the Committee, a resolution was passed at the Long Beach Convention to override the primary balloting and select the nominees at the convention. Thereafter, the Committee contends, Mr. Buchanan and Ms. Foster were duly nominated.

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The Committee also denies each of the five specific allegations raised in the complaint in MUR 5169, as follows:

- The Committee denies that Mr. Moan knowingly permitted the Buchanan campaign to submit a list of unqualified voters to receive primary ballots. The Committee insists that Mr. Moan had no knowledge of the specifics of the lists submitted by either of the candidates.
- With regard to the allegation that Mr. Moan supported efforts to prevent an audit of the lists of primary voters, the Committee contends that such an audit is not provided for in the party rules.
- The Committee denies that Mr. Moan improperly prevented action by the RPUSA Executive Committee to disqualify Mr. Buchanan. It claims that “no properly constituted Executive Committee passed a valid resolution to disqualify Mr. Buchanan.” The Committee also insists that Mr. Moan, as its Chairman, would have likewise “opposed any purported action of a rump Executive Committee to disqualify Mr. Hagelin.”
- The Committee denies that Mr. Moan supported the effort by the Buchanan campaign to rescind the RPUSA nominating process. As explained above, the Committee contends that, in light of the widespread belief that the pre-convention balloting was tainted, a valid resolution was passed at the convention to disregard the pre-convention voting and select the nominees on the convention floor. The Committee insists that the party’s nomination process “was meticulously followed, not rescinded.”
- The Committee denies that Mr. Moan, as Chairman, refused to seat legitimate delegates to the convention. The Committee points out that the legality of the Long Beach Convention has been upheld by the California Court against identical allegations of improper seating of delegates. Moreover, the Committee notes that both complainants in MUR 5169 were parties before the California Court.

Thus, the Committee denies each of the five specific allegations contained in MUR 5169.

The Committee further points out that, in addition to having their allegations rejected by the California Court, the complainants -- Mr. Kresky and Mr. Mangia -- mounted the unsuccessful attempt to prevent the Commission from certifying public financing for the Buchanan/Foster general election campaign. Thus, the Committee characterizes the allegations in MUR 5169 as a “final desperate effort” by Mr. Kresky and Mr. Mangia to revive claims that have already been rejected in various forums. In light of the foregoing, the Committee requests that the Commission dismiss MUR 5169.

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**3. Analysis**

This Office recommends that the Commission dismiss MUR 5169 because the California Court has already determined that the Long Beach Convention was conducted in accordance with party rules. In fact, Mr. Kresky and Mr. Mangia, the complainants in MUR 5169, were defendants before the California Court and raised virtually identical claims in that forum. Moreover, Mr. Kresky and Mr. Mangia filed a stipulation in the California Court, in which they consented to the entry by that court of the injunction against them. The complainants have, thus, consented to the issuance of an injunction that rejects the same allegations that they raise here. Finally, the Commission, in issuing a repayment determination for only a small portion of the money spent by the Committee on the Long Beach Convention, has tacitly acknowledged that the Committee has satisfied its burden to establish that all other spending was proper. In light of the foregoing, this Office recommends that the Commission dismiss MUR 5169 as to all respondents.

**C. MUR 5190**

**1. Allegations**

MUR 5190 contains two allegations.<sup>20</sup> First, as in the other MURs, the complaint challenges all spending of public money on the Long Beach Convention on the grounds that the convention was not conducted in accordance with RPUSA rules. Second, MUR 5190 challenges all payments made by the Committee to the law firm Cooter, Mangold, Tompert & Wayson, P.L.L.C. ("Cooter Firm") for the professional services of one of its attorneys, Dale Cooter. The basis for this challenge is that Mr. Cooter violated

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<sup>20</sup> MUR 5190 was filed on April 4, 2001 by Sue Harris DeBauche, who purports to be Chairman of the Virginia Reform Party.

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professional ethics rules and, thus, under the Fund Act, public money could not be used to pay for his services. Specifically, the complaint alleges that Mr. Cooter acted in Mr. Buchanan's interest rather than in the party's interest.

## **2. Response**

The Committee and the Party filed a joint response to the complaint in MUR 5190, denying that the Long Beach Convention was illegal. They refer to the Committee's response in MURs 5164 and 5182 to show that the Long Beach Convention was valid, as determined by the California Court. With regard to the allegations of ethical violations by Mr. Cooter, the Committee notes that the complainant in MUR 5190, Ms. DeBauche, asserted identical allegations against Mr. Cooter before the Virginia State Bar ("VSB") and the Attorney Grievance Commission of Maryland ("AGCM"), which regulate lawyers in their respective states. The Committee attached to its response documents that demonstrate that the allegations were dismissed by the two state agencies. Moreover, the Committee points out that the payments it made for legal services related to the Long Beach Convention were reviewed by the Commission's Audit Division, which raised "no questions or objections to these expenditures." Consequently, the Committee contends that all payments to the Cooter Firm were permissible.

## **3. Analysis**

This Office recommends that the Commission dismiss MUR 5190 because the allegations in MUR 5190 were properly raised and rejected in other forums. Specifically, as explained above, the legality of the Long Beach Convention has been upheld by the California Court, which found that it was conducted in accordance with party rules. With regard to the allegations of ethical misconduct by Mr. Cooter, these allegations are outside the Commission's jurisdiction and have already been considered and dismissed by

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1 the appropriate regulatory bodies in Maryland and Virginia. Indeed, as set forth on the  
2 documents attached to the Committee's response, the VSB concluded, "no tribunal which  
3 adjudicates complaints of attorney misconduct in the Commonwealth of Virginia would  
4 find that Mr. Cooter engaged in ethical misconduct." Likewise, the AGCM, did not "find  
5 any actions by Mr. Cooter that violate the Maryland Rules of Professional Conduct."<sup>21</sup>  
6 For these reasons, this Office recommends that the Commission dismiss MUR 5190 as to  
7 all respondents.

8 **VI. FURTHER ACTION**

9 Although this Office recommends that the Commission find reason to believe  
10 certain provisions of the law were violated

11 Instead, this Office recommends that the Commission hold  
12 MURs 5164 and 5182 in abeyance pending the resolution of the Commission's  
13 repayment determination against the Committee. As this Office has previously informed  
14 the Commission, the RPUSA has sought administrative review of the repayment  
15 determination. See Informational Memorandum to the Commission, dated March 7,  
16 2003. If efforts to secure the repayment of impermissibly used public funds through the  
17 repayment process are not successful, these MURs may allow the Commission greater  
18 flexibility to instead recover the misused funds in the enforcement context. Should the  
19 Commission successfully secure the full repayment via the repayment process, this Office  
20 will likely recommend that the Commission close MURs 5164 and 5182 with no further  
21 action.

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<sup>21</sup> Given that the state entities with jurisdiction over attorney professional misconduct have found no ethical violations, it is not necessary for the Commission to resolve whether the expenditure of public money for legal services from attorneys that are later found to have committed ethical violations would constitute a violation of the Fund Act by the client committee.

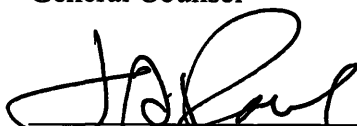
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**VII. RECOMMENDATIONS**

1. Find no reason to believe on the basis of the complaints filed in MUR 5164 and MUR 5182 that Perelman Pioneer & Company, Inc. violated the Act;
2. Find no reason to believe on the basis of the complaints filed in MUR 5164 and MUR 5182 that any violation of the Act occurred with respect to the payment for the performance bond;
3. Dismiss MUR 5164 and 5182 as they relate to allegations that the Reform Party's 2000 presidential nominating convention was not conducted in accordance with the party's rules;
4. Find reason to believe in MUR 5164 and MUR 5182 that the Reform Party 2000 Convention Committee and Gerald Moan, as Treasurer, violated 26 U.S.C. § 9008(c), 26 U.S.C. § 9012(c)(2), 11 C.F.R. § 9008.7(a), and 11 C.F.R. § 9012.3(b) by making an improper payment of public funds to The Performance Group;
5. Find reason to believe in MUR 5164 and MUR 5182 that the Reform Party of the United States of America, and Mark Lauterman, as Treasurer, violated 26 U.S.C. § 9008(c), 26 U.S.C. § 9012(c)(2), 11 C.F.R. § 9008.7(a), and 11 C.F.R. § 9012.3(b) by making an improper payment of public funds to The Performance Group;
6. Take no action at this time in MUR 5164 and MUR 5182 as to The Performance Group;
7. Dismiss MUR 5169 as to all respondents and close the file;
8. Dismiss MUR 5190 as to all respondents and close the file;
9. Approve the attached Factual and Legal Analyses; and
10. Approve the appropriate letters.

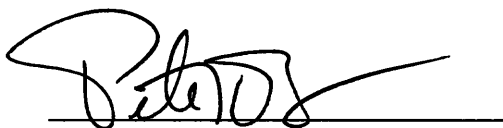
Date: 10-2-03

Lawrence H. Norton  
General Counsel

BY:   
James A. Kahl  
Deputy General Counsel

  
Gregory R. Baker  
Acting Associate General Counsel





Peter G. Blumberg  
Acting Assistant General Counsel



Daniel E. Pollner  
Attorney

Attachments:

1. Proposed Factual and Legal Analysis (for the Committee)
2. Proposed Factual and Legal Analysis (for the RPUSA)

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